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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Establishment of a Class A )  
Television Service )  
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MM Docket No. 00-10  
RM 9260

To: The Commission

**COMMENTS OF QUORUM OF UTICA LICENSE, LLC**

Quorum of Utica License, LLC ("Quorum"), by its attorneys, hereby submits its comments in response to the Commission's *Order and Notice of Proposed Rule Making* in the above-referenced proceeding, released January 13, 2000 ("NPRM"). The NPRM seeks comment on, among other questions, the Commission's interpretation of Section (f)(3) of the Community Broadcasters Protection Act of 1999 ("CBPA"), which provides that "no low power television station authorized as of the date of enactment . . . shall be disqualified for a class A license based on common ownership with any other medium of mass communications."<sup>1</sup>

Quorum believes that Section (f)(3)'s plain language proposes no changes to the Commission's rules with respect to the attribution of low power television ("LPTV") stations for the purposes of its multiple ownership rules, whether such stations are Class A LPTV stations or non-Class A LPTV stations.<sup>2</sup> Quorum further believes that making Class A LPTV stations attributable under the Commission's multiple ownership rules will create a significant

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<sup>1</sup> Pub. L. No. 106-113, 113 Stat. 1501, Section 5008 (f)(3) (1999).

<sup>2</sup> Section 74.732(b) of the Commission's rules states "low power TV . . . stations are not counted for purposes of §73.3555, concerning multiple ownership."

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disincentive on the part of LPTV licensees to seek Class A status, thereby defeating Congress's desire to "buttress the commercial viability of those LPTV stations which can demonstrate that they provide valuable programming to their communities."<sup>3</sup> Accordingly, Quorum urges that the Commission retain its LPTV (non) attribution rule as is and not attribute the Class A low power television stations to either current or future licensees.

### **Background.**

When the Commission first initiated an inquiry into a low power television service, its stated goal was to "use over-the-air broadcast mechanisms to help meet the [public's] service needs and to expand the diversity of programming available to the public."<sup>4</sup> In 1982, the Commission determined that a low power television service would meet the public's need for increased diversity of programming and implemented this service on a secondary basis.<sup>5</sup> Today, LPTV stations provide diverse services to the public, including niche programming to specialized communities and local over-the-air programming to small television markets, frequently providing network programming that otherwise would not be available to these markets.

Yet, in the smaller television markets, due to the significant expense associated with operating LPTV stations, many such stations are licensed to and operated by licensees who also are licensees of full power stations located in the same market. Quorum is one such licensee.

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<sup>3</sup> 145 Cong. Rec. S14696-03\*S14725 (1999).

<sup>4</sup> *Inquiry into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System, Notice of Inquiry*, 68 FCC 2d 1525, 1527 (1978).

<sup>5</sup> *Inquiry into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System, Report and Order*, 51 RR 2d 476 (1982) ("LPTV Order").

Quorum is the licensee of low power television station WPNY-LP, Little Falls, New York, a UPN affiliate, and of full power television station WFXV, Utica, New York, a Fox affiliate. Both stations are in the Utica Designated Market Area ("DMA"). The Utica DMA includes only two other full power television stations -- an NBC affiliate and an ABC affiliate. Therefore, WPNY-LP provides this market with a fourth free, over-the-air television service and, as a UPN affiliate, provides the public with more programming options. WPNY-LP also creates greater opportunities for advertisers to deliver their messages to viewers. WPNY-LP provides public service by broadcasting numerous public service announcements each year and provides its DMA with a free, over-the-air outlet for regional sports programming such as Syracuse University football and basketball games and New York Yankees baseball games.

The Utica DMA, because of its small size, would have difficulty supporting an additional full power television station.<sup>6</sup> Indeed, Quorum is able to operate WPNY-LP and provide its many services only through the support WPNY-LP receives from co-owned/co-located station WFXV. Quorum believes that few of the existing small-market low power stations would survive as stand-alone operations without the support of full power stations.

**Low Power Television Stations Should Not Be Attributable Under the Commission's Rules.**

The Commission seeks comment on Congress's intent in its statement "no low power television station authorized as of the date of enactment . . . shall be disqualified for a class A license based on common ownership with any other medium of mass communications."<sup>7</sup> The Commission questions whether this statement (Section (f)(3)) should apply only to those

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<sup>6</sup> The Utica DMA is ranked number 168. *See Broadcasting & Cable Yearbook 1999*, p. B-230.

<sup>7</sup> *NPRM* at ¶ 22.

licensees authorized as of November 29, 1999 (the date of enactment), or whether this section should apply to all LPTV stations, regardless of when authorized.<sup>8</sup>

Quorum supports the Commission's tentative conclusion that no LPTV station, regardless of when authorized, would be disqualified from applying for Class A status based on its licensee's common ownership of other media interests. To interpret this language otherwise would prevent future licensees from obtaining the benefit of Class A LPTV service and, therefore, create a disincentive for those who have the necessary financial resources from providing LPTV service to the public.

The Commission also interprets Section (f)(3) as allowing the transfer of an unconverted LPTV station, authorized as of November 29, 1999, to a buyer with other cross-media interests, with the buyer subsequently converting the station to Class A status after transfer.<sup>9</sup> However, the Commission seeks comment as to whether a converted LPTV station is transferable regardless of the buyer's cross-media interests.<sup>10</sup> Quorum proposes that the Commission allow sales of Class A LPTV stations to any buyer, regardless of its cross-media ownership interests, and recommends that Class A LPTV stations remain non-attributable under the multiple ownership rules. To regulate otherwise will discourage conversion to Class A status and defeat Congress's intent to "ensure that many communities across the nation will continue to have access to free, over-the-air low power television (LPTV) stations . . . ."<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* Essentially, the Commission seeks to determine whether Class A low power stations should be attributable under its multiple ownership rules.

<sup>11</sup> 145 Cong. Rec. S14696-03\*S14724 (1999).

When the Commission adopted rules governing the low power television service it specifically determined not to apply ownership restrictions to this service because of the stations' limited coverage areas (which limit the areas from which advertising support may be garnered), the stations' secondary status, and the overall viability of LPTV stations generally.<sup>12</sup> Many of these same reasons will remain valid for Class A LPTV stations.

Class A LPTV stations will remain low power stations serving very small service areas, and the area from which a Class A licensee can generate advertising revenues will not increase. An existing LPTV station (whether Class A or not) receiving support from another station in its market will continue to need this support for its operations. In addition, most LPTV stations (Class A or not) do not have "must carry" rights on cable systems.<sup>13</sup> Thus, the CBPA changes only the secondary status of low power television stations; it does nothing to expand the coverage area or enhance the economic viability of these stations.<sup>14</sup>

In addition, the plain language of Section (f)(3) indicates congressional intent against applying the Commission's multiple ownership rules to the Class A LPTV service. Section (f)(3) clearly means that any qualified low power licensee may seek Class A status regardless of its other ownership interests. Attributing such ownership interests to future licensees will vitiate Congress's clear grant of non-attribution to current licensees because many currently-qualified licensees may determine that it is in their best interests to not seek Class A status for their

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<sup>12</sup> *LPTV Order* at 517.

<sup>13</sup> The Commission's rules provide that only certain LPTV stations, as defined by Section 76.55(d), are eligible to invoke "must carry." 47 C.F.R. §76.56(b)(3).

<sup>14</sup> Class A LPTV stations may be more able to gain access to capital for construction. However, increased economic viability does not necessarily follow, because the stations' average service areas will not be any larger.

stations in order to preserve the ability to sell them to a wider range of buyers if and when they decide to sell.

Attribution of Class A LPTV stations to future licensees will require compliance with the Commission's duopoly rules, national ownership caps and other ownership rules. Thus, although a current licensee is not required to divest other media interests to convert to Class A status, transfer of an attributable Class A LPTV station may require a future licensee to divest the station in certain situations. For example, if Class A stations are attributable, a licensee such as Quorum, with a full power television station and a Class A LPTV station in the same market, would be unable to sell both stations to the same buyer (diminishing the value of both stations) without a waiver of the duopoly rules.<sup>15</sup> Consequently, a licensee may determine that there is greater advantage in its LPTV station remaining a non-Class A, secondary service. Retaining such secondary status will leave the LPTV station and its community vulnerable to loss of service due to power increases not only by full power NTSC and DTV stations but also by neighboring Class A LPTV stations. This is entirely contrary to the CBPA's purpose of preserving low power television.

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<sup>15</sup> A sale to a separate buyer assumes that the licensee would be able to find a separate buyer; the other choice would be to cease broadcasting.

**Conclusion.**

For the foregoing reasons, the Commission should determine that no present or future licensee shall be disqualified from obtaining or holding a Class A LPTV license because of common ownership of any other medium of mass communication and that Class A LPTV stations will continue not to count as other media interests under the Commission's rules.

Respectfully submitted,

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February 10, 2000